

MAINE LAND USE REGULATION COMMISSION
WETLAND COMPENSATION GUIDELINES
Adopted February 26, 1998

I. COMPENSATION

“Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values.” [Section 10.17, B, 7, b. (5)]

Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.

In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention which reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

A. When required

Compensation may be required when the Commission *"determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by an assessment of wetland functions and values in accordance with application requirements or by the Commission's evaluation of the project."* (10.17, B, 7, b. (5)) If a functional assessment is not required under LURC's wetland rules and these compensation guidelines, no compensation will be required unless the Commission identifies wetland functions that will be lost or degraded.

B. Functional assessment

Resource functions that will be lost or degraded are identified by the Commission based upon an assessment of wetland functions done by the applicant and by the Commission's evaluation of the project. The functional assessment must be conducted in accordance with application requirements for all activities:

1. in wetlands of special significance; or
 2. in all other wetlands which alter more than 20,000 square feet per project.
- The functional assessment is not required for the activities listed in Section I, C. below.

C. Exceptions

Neither a functional assessment nor compensation is required for the following single, complete projects:

1. Freshwater wetlands

- a. Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values, significant wildlife habitat, or imperiled or critically imperiled communities due to the activity;
- b. Alterations of less than 20,000 square feet in a freshwater wetland not of special significance, provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;
- c. Alterations in a freshwater wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water mark on both sides, measured perpendicular to the thread of the river, stream or brook, provided:
 - (1) Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and
 - (2) The total project affects 500 square feet or less of the channel.

2. Coastal Wetlands

A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries and Wildlife as applicable.

3. Great Ponds

A great pond alteration that does not place any fill below the normal high water mark, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries and Wildlife or the Department of Environmental Protection.

4. Walkways/Access Structures

A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.

D. Location of compensation projects

The compensation must take place in a location:

1. On or close to a project site as necessary to off-set direct impacts to an aquatic ecosystem;
2. Otherwise, compensation may occur in an off-site location where it will satisfy wetland priority needs as established at the local, regional or state level to achieve an equal or higher net benefit for wetland systems, if approved by the Commission.

E. Types of compensation

Compensation may occur in the form of:

1. Restoration of previously degraded wetlands;
2. Enhancement of existing wetlands;
3. Preservation of existing wetlands or adjacent uplands where the site to be preserved provides significant wetland functions and might otherwise be degraded by unregulated activity; or
4. Creation of wetland from upland.

More than one method of compensation may be allowed on a single project. Preference is generally given to restoration projects that will off-set lost functions within, or in close proximity to, the affected wetland. However, other types of compensation may be allowed by the Commission if the result is an equal or higher overall net benefit for wetland systems.

F. Compensation amounts

The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity; the functions of the wetland to be altered; the type of compensation to be used; and the characteristics of the compensation site. Compensation shall be performed to meet the following ratios at a minimum, unless the Commission finds that a different ratio is appropriate to directly off-set wetland functions to achieve an equal or higher net benefit for wetlands:

1. 1:1 for restoration, enhancement or creation to compensate for impacts in wetlands not of special significance;
2. 2:1 for restoration, enhancement or creation to compensate for impacts in wetlands of special significance;

3. 8:1 for preservation, including adjacent upland areas, to compensate for impacts in all wetlands.

G. Waiver

The Commission may waive the requirement for a functional assessment, compensation, or both. The Commission may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The Commission may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

II. GENERAL LAND USE STANDARDS

The review standards that apply to applications for wetland alterations requiring compensation appear in Section 10.17, B, 7, b, and in these guidelines. These review standards are in addition to LURC's statutory review criteria which apply to all applications.

III. WETLAND COMPENSATION STANDARDS

Where compensation is required, the following standards apply:

A. Expertise

The applicant shall demonstrate sufficient scientific expertise to carry out the proposed compensation work.

B. Financial Resources

The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions.

C. Persistence

For restoration, enhancement and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions after a period of three years unless otherwise approved by the Commission. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the Commission may require additional monitoring and corrective action, or additional wetland restoration, enhancement or creation in order to achieve the compensation ratio as originally approved.

D. Monitoring

The applicant shall set forth a plan for interim reporting and remediation measures during monitoring of the restored or created wetland over a minimum of five years, which shall include contingency plans for replanting, contouring or other corrections if the project fails to meet project goals during that time.

E. Maintenance

A compensation project that will naturally maintain itself without active intervention is preferred. However, the permittee may be required to conduct activities to assure continuation of the wetland, or the accomplishment of compensation goals, after a compensation project has been technically completed. Such activities may include, but are not limited to, water level manipulations and control of non-native plant species.

F. Protection

1. A compensation project involving restoration, enhancement or creation must provide for deed covenant and restriction or a conservation easement conveyed to a qualified holder that requires maintenance of the area as a coastal wetland, freshwater wetland or great pond in perpetuity. The conservation easement must list the Department of Conservation as an enforcing agent. Regardless of the size of the compensation area, any future alterations in, on or over it must be approved by the Commission.
2. A compensation project involving preservation must provide for a conservation easement conveyed to a qualified holder or deed covenant and restriction so that the parcel will remain undeveloped in perpetuity. The easement must list the Department of Conservation as an enforcing agent. Compensation areas may be deeded to local or state conservation groups or agencies, but any land management practices must be approved by the Commission.

G. Source of Water (Creation Only)

For a creation project, the Commission prefers that the created wetland be located adjacent to an existing wetland or waterbody.

H. Implementation Schedule

A schedule for implementing the compensation plan must be submitted. Generally, compensation will be required to be completed prior to, or concurrent with, the permitted alteration. For on-going or long-term alterations, such as mining, compensation must be completed no later than within the first year of operation unless otherwise approved by the Commission.

IV. MITIGATION BANKING

A. Purpose

A public or private entity may apply to the Commission to undertake wetland compensation projects for the purposes of off-setting one or more alteration projects proposed at that time or in the future. The ratios set forth in I, F, 1-3, page 3 will be used as guidance to determine the amount of credit required for any proposed alteration.

B. Location

Compensation work must take place in the same watershed or in the project vicinity of the future alteration work, if feasible. Otherwise, the work must occur as close to the wetland alteration site or sites as feasible.

C. Effectively Functioning

A project to be used for compensation credit must be functioning as proposed in the mitigation banking application, as demonstrated by an updated functional assessment, in order to qualify as an off-set to a proposed activity.

D. Limitation

No person may use mitigation banking to compensate for more than 25 acres of wetland alteration statewide in any one year period.

E. Expertise

The applicant is required to show a combination of expertise, experience and resources sufficient to undertake and maintain land placed in mitigation banking.

V. SUBMISSION REQUIREMENTS

A. Alternatives Analysis

If required, an alternatives analysis must be conducted, that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:

1. Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;
2. Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and

4. Demonstrating the need, whether public or private, for the proposed alteration.

B. Functional Assessments

If required, a functional assessment must be conducted of the wetland to be altered, that analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The functional assessment must be conducted by a qualified professional(s) using an acceptable methodology approved by the Commission. If other than an established methodology is proposed, the applicant must submit documentation describing how the methodology was developed, how the wetland functions and values are determined using the methodology, and how much field testing the technique has undergone.

In cases where the size of the wetland alteration or other factors make the use of an established assessment methodology impracticable or inappropriate, the Commission may instead accept the best professional judgment of a qualified professional. The applicant must notify the Commission if he or she intends to use best professional judgment.